



Former Czech criminal-law system fell short of Convention requirement of effective protection for alleged victims of sexual assault

In today's **Chamber judgment**¹ in the case of [Z v. the Czech Republic](#) (application no. 37782/21) the European Court of Human Rights held, unanimously, that there had been:

a violation of Articles 3 (prohibition of inhuman or degrading treatment) and 8 (right to respect for private life) of the European Convention on Human Rights.

In this case, the applicant complained that she had been subjected to non-consensual sexual acts by a priest from 2008 to 2009. More specifically, she complained of the authorities' restrictive interpretation of the constituent elements of the offences of rape and sexual abuse under Law no. 140/1961 (Criminal Code) then in force, of the fact that this legal framework had not been sufficient to ensure effective punishment for the sexual offences allegedly perpetrated against her and of the lack of an effective investigation.

The Court found, in particular, that the authorities' approach had been incapable of affording the applicant adequate protection. In consequence, the Court considered that the Czech State had failed to fulfil its positive obligations, which had required the effective application of a criminal-law system capable of punishing the non-consensual sexual relations alleged by the applicant.

Moreover, the Court noted that the authorities had considered that the suspect's actions might have constituted sexual coercion under the new Criminal Code (Law no. 40/2019) that had entered into force after the events at issue (1 January 2010).

A legal summary of this case will be available in the Court's database HUDOC ([link](#)).

Principal facts

The applicant is a Czech national who was born in 1981. At the relevant time, she was taking courses in the faculty of theology. She submitted that from 2008 to 2009 – taking advantage of a period when she had been affected psychologically by her father's death and of a deterioration in the state of her health – she had been assaulted by a priest who was a lecturer in the faculty of theology and was also her dissertation supervisor.

In 2009 she brought the matter to the attention of the relevant Church authorities, who ordered the priest to resign from his duties in the faculty of theology and to withdraw from the monastic community he had led. He left for a monastery in Italy, where he now lives.

That same year, the police opened an investigation in the course of which they interviewed the applicant, among others. She told them that she had initially viewed her physical relations with the suspect as an attempt by him to assist her, but that those incidents had intensified following her father's death. She further stated that she had grown very fearful, that she had felt sullied and guilty and that she had feared she would be unable to complete her studies. She also submitted that she

1. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution.

had subsequently told the suspect on several occasions that she did not consent to these acts, without, however, having been able to defend herself actively.

In 2020 the suspect sent the police a statement in which he confessed to having committed breaches of ethics but maintained that the applicant had consented to their physical relations.

The police subsequently discontinued the investigation. On the basis of Law no. 140/1961 (Criminal Code) then in force, they concluded that the suspect's actions, while incompatible with his duties and with good morals, did not constitute an offence. They considered that these actions could not be characterised as sexual abuse, since the applicant had not been a minor at the relevant time, and that the suspect could not have taken advantage of her dependence on him since she had not been under his control. Nor had it been a case of rape in the police's view, as the suspect had not relied on violence, or the threat of violence, and the applicant had expressed her objection only *after* – and not *during* – the sexual relations in question. The police observed that the suspect's actions might have constituted sexual coercion under the new Criminal Code (Law no. 40/2009), but that it had only entered into force on 1 January 2010 and thus after the events in question.

The applicant appealed against that decision but the prosecutor's office dismissed her appeal, insisting, however, that it wished to minimise neither the priest's actions nor the applicant's suffering. It nevertheless considered that the applicant had not been under the suspect's control, within the meaning of that term as interpreted in the relevant case-law (namely, as in the relationship of a parent with regard to his or her child, of a guardian with regard to a person lacking legal capacity, or of a teacher with regard to a pupil), and that she had not lacked the ability to defend herself. The municipal prosecutor's office subsequently upheld that decision, which it found to have been duly reasoned.

The applicant lodged a constitutional appeal, which was declared inadmissible in 2021.

Complaints, procedure and composition of the Court

Relying on Articles 3 (prohibition of inhuman or degrading treatment) and 8 (right to respect for private life) of the Convention, the applicant complained of the authorities' restrictive interpretation of the constituent elements of the offences of rape and sexual abuse under Law no. 140/1961 (Criminal Code), of the fact that this legal framework had not been sufficient to ensure effective punishment for the sexual offences allegedly perpetrated against her and of the lack of an effective investigation into her allegations of sexual assault.

The application was lodged with the European Court of Human Rights on 20 July 2021.

Judgment was given by a Chamber of seven judges, composed as follows:

Mattias **Guyomar** (France), *President*,
Lado **Chanturia** (Georgia),
Carlo **Ranzoni** (Liechtenstein),
Mārtiņš **Mits** (Latvia),
Stéphanie **Mourou-Vikström** (Monaco),
María **Elósegui** (Spain),
Kateřina **Šimáčková** (the Czech Republic),

and also Victor **Soloveytchik**, *Section Registrar*.

Decision of the Court

Articles 3 and 8

The Court observed that the police appeared to have taken the view that, for the acts in question to have been punishable, it would have been necessary for the applicant to have expressed her objection *during* those acts. The fact that she had expressed such objections *afterwards*, repeatedly, and the possibility that the priest might have been mistaken in considering her to have consented, did not appear to have had the slightest importance for the authorities, which had also overlooked the possibility that the applicant might have had reasons to remain passive, or not to oppose the suspect on account of his position of authority, without, however, consenting to the acts in question.

Thus, despite the applicant's allegations to that effect, the authorities had not deemed it necessary to assess the credibility of the statements based on the context or to examine the circumstances surrounding them as a whole. In particular, they had not sufficiently examined whether and, if so, to what extent the applicant had been in a particularly vulnerable and dependent situation with regard to the priest in question. The prosecuting authorities had confined themselves to finding, for the purposes of domestic law and case-law, that the applicant had not lacked the ability to defend herself.

The Court was aware that the domestic case-law, as it stood at the relevant time, recognised that in certain situations, by reason of a state of powerlessness caused, for example, by alcohol, drugs, illness or disability, a victim might be incapable of expressing his or her wishes or of defending himself or herself. Nevertheless, in the Court's view, this possibility did not sufficiently take into account situations of vitiated consent resulting from an abuse of vulnerability, or the psychological reactions of victims of sexual assault more generally. It was in the light of that restrictive interpretation of the constituent elements of the offence of rape as defined in Law no. 140/1961 (Criminal Code) that the authorities responsible for the investigation had decided to discontinue it. The final decision in the present case had thus been taken during the preliminary stage of the criminal proceedings, such that the case had never been brought before a court, since domestic law did not allow the applicant to lodge an appeal with a judicial authority.

The Court noted that more recent Supreme Court case-law, with reference to the new Criminal Code, appeared to provide a more appropriate response in this regard.

Concerning the offence of sexual abuse as defined in the Criminal Code in force at the relevant time, the Court observed that the authorities had concluded that the applicant had not been under the suspect's control within the meaning of that term, as interpreted in the relevant case-law, and that her free will had not been constrained since she was an adult with full legal capacity and unafflicted by any illness preventing her from expressing her wishes. The authorities' finding to the effect that the applicant may have felt a certain dependence with regard to the suspect had not prompted them to extend their analysis. In the Court's view, this approach – which had consisted, in substance, in refusing to assess the facts in their context by taking account of the applicant's psychological state in the light of the specific circumstances of the case, and not merely of the fact that she was an adult – had been flawed.

Moreover, the Court noted that the authorities had considered that the suspect's actions might have constituted sexual coercion under the new Criminal Code that had entered into force after the events at issue.

It followed that the authorities' approach in the present case had been incapable of affording the applicant adequate protection. In consequence, the Court found that the Czech State had failed to fulfil its positive obligation, which had required – since at least the *M.C. v. Bulgaria*² judgment of

² *M.C. v. Bulgaria*, no. 39272/98, CEDH 2003-XII.

2003 – the effective application of a criminal-law system capable of punishing the non-consensual sexual relations alleged by the applicant. In that connection, it reiterated that it was not for it to decide on the alleged perpetrator’s criminal liability and that its above finding could therefore not be interpreted as an opinion as to his guilt or as a call to reopen the investigation in the present case.

There had therefore been a violation of Articles 3 and 8 of the Convention.

Just satisfaction (Article 41)

The Court held that the Czech Republic was to pay the applicant 25,000 euros (EUR) in respect of non-pecuniary damage and EUR 1,000 in respect of costs and expenses.

The judgment is available only in French.

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Press contacts

echrpress@echr.coe.int | tel.: +33 3 90 21 42 08

We are happy to receive journalists’ enquiries via either email or telephone.

Inci Ertekin (tel.: + 33 3 90 21 55 30)

Tracey Turner-Tretz (tel.: + 33 3 88 41 35 30)

Denis Lambert (tel.: + 33 3 90 21 41 09)

Neil Connolly (tel.: + 33 3 90 21 48 05)

Jane Swift (tel.: + 33 3 88 41 29 04)

The European Court of Human Rights was set up in Strasbourg by the Council of Europe member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.